



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWK/156522

PRELIMINARY RECITALS

Pursuant to a petition filed March 31, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee County Disability Services Division-DSD in regard to Medical Assistance, a hearing was held on May 27, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether DSD and the Department of Health Services (DHS) correctly terminated the Petitioner from the Children's Long Term Support Waiver program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Nancy Dumas, Disabilities Specialist - Children's Unit
Milwaukee County Disability Services Division-DSD
Attention: Mark Stein-DSD
1220 W. Vliet St., Suite 300
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner received intensive autism therapy services through the Children's Long-Term Care Waiver program. (Testimony of Petitioner's mother and Ms. Dumas)
3. Petitioner enrolled in and began receiving Intensive In-Home Treatment Services for autism spectrum disorder in March 2011. At that time, her mother signed a notice that indicated that the Petitioner needed to receive at least 20 hours of services per week / 80 hours per month, or she could be terminated from the program. (Testimony of Petitioner's mother)
4. In October 2013, the Petitioner switched from the "classic" Intensive In-Home Services program to the Consultant Behavioral Intervention Program (CBI), so she only needed to receive 10 hours of services of week to maintain her enrollment. (Testimony of Petitioner's mother; Exhibit 3)
5. In 2011, Petitioner did not meet the required number of hours 8 out of the 10 months from March through December. Specifically, Petitioner did not meet the minimum number of hours from March through June and from September through December. (Exhibit 3)
6. In 2012, Petitioner did not meet the required number of hours 8 out of 12 months, specifically in January and from June through December. (Exhibit 3)
7. In 2013, Petitioner did not meet the required number of hours 6 out of 12 months, specifically, February, May, June, July, September and October. (Exhibit 3)
8. Petitioner met the required number of hours in November 2013 through March 2014. (Exhibit 3)
9. On March 12, 2014, the Milwaukee County Department of Health and Human Services, Disabilities Services Division sent Petitioner's mother a notice indicating that the Petitioner's services through the Children's Long Term Waiver Program were going to be discontinued on April 5, 2014 because she "had not met the intensive therapy hours waiver requirement needed to transition to post-intensive services." (Exhibit 1)
10. On that same day the Department of Health Services also sent Petitioner a notice indicating that effective April 5, 2014, the Petitioner would be terminated from the Children's Long Term Services waiver program because she had "not met the intensive hours waiver requirement needed to transition to post-intensive services." (Exhibit 1)
11. Petitioner's mother filed a request for fair hearing on behalf of the Petitioner that was received by the Division of Hearings and Appeals on March 31, 2014. (Exhibit 1)

DISCUSSION

When the Petitioner began receiving intensive-in home services in 2011, there was only one program for autism services under the Children's Long Term Services Waiver Program (CLTS). This program is now referred to as the "classic" program. The rules governing this program are found in the Medicaid Waivers Manual, effective 2010, in Chapter IV, a copy of which has been mailed to the Petitioner's mother with this decision.

Under paragraph 9, of Service Requirement / Limitations / Exclusions, it states that, "a child must be receiving this service at an intensive level to be eligible for CLTS Waiver coverage for this service. Intensive levels of services are defined as 20 to 35 hours of face to face treatment per week provided in the child's home."

Under Paragraph 14, a county agency "may request approval for a child to transition who is nearing the three year maximum, with at least 12 months of continuous treatment services provided under with Wisconsin CLTS Waiver."

In 2012, the Department of Health Services broke down the Intensive In-Home Service Program into two different programs, the Early Intensive Behavioral Intervention Program (EIBI) and the Consultative

Behavioral Intervention Program. (CBI). The policies and rules governing these programs can be found in Appendix E of Medicaid Home and Community Based Waivers Program Manual (HCBWM), effective March 15, 2012, which is on-line at:

http://www.dhs.wisconsin.gov/BDDS/waivermanual/app_e.htm

In order for a child to be eligible for CLTS Waiver coverage under EIBI, the child must receive services an “intensive level”. (HCBWM, Appendix E, EIBI Services, Paragraph 9) “Intensive levels of services are defined as a minimum of 30 to a maximum of 40 hours of face-to-face treatment per week provided in the location most appropriate to meet the child’s needs as determined by the treatment clinician” (Id.) If a child’s hours fall below the required minimum of 30 hours as averaged across a three month period, the child may be discontinued from this service at the discretion of the county waiver agency working with DHS. In these cases, children at the EIBI level of service **may** be moved to the consultative behavioral intervention (CBI) level of service (10-20 hours of face-to-face treatment per week).” (Id at paragraph 10)

In order for a child to be eligible for CLTS Wavier coverage under CBI, the child must be receiving this service at a consultative level. (HCBWM, Appendix E, CBI Services, Paragraph 9) “Consultative levels of services are defined as a minimum of 10 to a maximum of 20 hours of face-to-face treatment per week provided in the location most appropriate to meet the child’s needs as determined by the treatment clinician.” (Id.) “If a child’s hours fall below the required minimum of 10 hours as averaged across a three month period, the child may be discontinued from this service at the discretion of the county waiver agency working with DHS.” (Id at paragraph 10)

In both cases, in order for a child to be eligible to transition to ongoing waiver services from EIBI and/or CBI Services under the CLTS Waivers, “a child must have received at least the minimum number of hours of face-to-face treatment at the chosen level of service (40 hours a month for CBI and 120 hours a month for EIBI) each calendar month during at least 12 months within any 18-month period.” (HCBWM, Appendix E, Transition to On-going Services Policy)

The notice of termination was issued to Petitioner in March 2014. Looking at the 36 month period between March 1, 2011 and February 28, 2014, there is no 18 month period in which the Petitioner received the minimum number of required hours for 12 of 18 months. As such, the Petitioner is not eligible to transition to on-going waiver services and the agency correctly terminated her benefits.

Petitioner’s mother did not dispute the fact that the minimum number of hours were not met and that she rescheduled a number of appointments. However, Petitioner’s mother argues that the situation isn’t fair because 1) the treatment provider or county agency should have kept track of the hours for her; 2) they should have warned her that her daughter was not meeting the minimum hour requirements; and 3) the county agency should have suggested she switch to the CBI services earlier on. Regrettably, these are equitable arguments and administrative law judges do not possess equitable authority. *Oneida County v. Converse*, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993). As such, I cannot address the merits of these arguments.

CONCLUSIONS OF LAW

DSD and DHS correctly terminated the Petitioner’s services through the CLTS Waiver program.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of June, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 6, 2014.

Milwaukee Cty Disability Services Division-DSD
Bureau of Long-Term Support